

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SUKHVINDER SINGH,

Petitioner,

v.

LORETTA LYNCH, et al.,

Respondents.

NO. C15-756-TSZ-JPD

REPORT AND
RECOMMENDATION

INTRODUCTION

Petitioner, a native and citizen of India, filed the instant habeas corpus petition pursuant to 28 U.S.C. § 2241, seeking release from immigration detention at the Northwest Detention Center in Tacoma, Washington. Dkt. 7. Respondents have moved to dismiss, arguing that petitioner's detention is statutorily authorized and he is not entitled to release. Dkt. 11. Through counsel, petitioner filed a response and request to voluntarily dismiss his habeas petition without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2). Dkt. 16. He explained that he hopes to pursue avenues for relief that would allow him to remain in the United States. *Id.* at 1. In their reply, respondents contend that dismissal with prejudice is appropriate because petitioner is not entitled to relief on the merits of his habeas petition. Dkt. 17.

1 Having carefully considered the submissions of the parties, the balance of the record, and
2 the governing law, the Court concludes that petitioner's request for voluntary dismissal without
3 prejudice should be GRANTED, respondents' motion to dismiss should be DENIED as moot,
4 and petitioner's habeas petition and this action should be DISMISSED without prejudice.

5 DISCUSSION

6 Rule 41(a)(2) states in pertinent part that, after a defendant serves an answer or a motion
7 for summary judgment, and absent a stipulation by all parties who have appeared, "an action
8 may be dismissed at the plaintiff's request, only by court order, on terms that the court considers
9 proper." Fed. R. Civ. P. 41(a)(2). The decision whether to permit voluntary dismissal under
10 Rule 41(a)(2), either with or without prejudice, is left to the sound discretion of the district court.
11 *Hamilton v. Firestone Tire & Rubber Co.*, 679 F.2d 143, 145 (9th Cir. 1982); *Hargis v. Foster*,
12 312 F.3d 404, 412 (9th Cir. 2002).

13 The purpose of Rule 41(a)(2) is to permit a plaintiff to dismiss an action without
14 prejudice so long as the defendant will not be prejudiced or unfairly affected by dismissal.
15 *Stevedoring Serv's of Am. v. Armilla Intern.*, 889 F.2d 919, 921 (9th Cir. 1989). "When ruling
16 on a motion to dismiss without prejudice, the district court must determine whether the defendant
17 will suffer some plain legal prejudice as a result of the dismissal." *Westlands Water Dist. v.*
18 *United States*, 100 F.3d 94, 96 (9th Cir. 1996); *see also Smith v. Lenches*, 263 F.3d 972, 975 (9th
19 Cir. 2001). Legal prejudice is "prejudice to some legal interest, some legal claim, some legal
20 argument." *Westlands Water Dist.*, 100 F.3d at 97. It is insufficient that the issues raised in a
21 lawsuit remain unresolved or a defendant faces the prospect of a second lawsuit. *Id.*; *Hamilton*,
22 679 F.3d at 145.

23 Respondents argue that Court should deny petitioner's request to voluntarily dismiss this
24 action without prejudice because his habeas petition can be denied on the merits and there is no

1 reason to permit him to later refile the same action. Dkt. 17 at 3. These arguments, however, fail
2 to establish plain legal prejudice. The fact that respondents' motion to dismiss is pending is only
3 a factor to be considered and does not establish that dismissal under Rule 41(a)(2) is
4 inappropriate. *See, e.g., Searcy v. Thomas*, No. 10-cv-294-EJL, 2013 WL 837936, at *2 - *3 (D.
5 Idaho Mar. 6, 2013); *Mitchell-Jones v. Menzies Aviation, Inc.*, No. C10-1190JLR, 2011 WL
6 3273221, at *3 (W.D. Wash. Jul. 28, 2011); *Creative Labs, Inc. v. Orchid Tech.*, No. C93-
7 4329TEH, 1997 WL 588923, at *2 (N.D. Cal. Sept. 12, 1997). As other courts have reasoned,
8 granting petitioner's request for voluntary dismissal would prevent the Court from ruling on
9 respondents' motion to dismiss, but it would not preclude respondents from raising the same
10 arguments in subsequent litigation. *Searcy*, 2013 WL 837936, at *3; *Mitchell-Jones*, 2011 WL
11 3273221, at *3; *Creative Labs, Inc.*, 1997 WL 588923, at *2. Thus, the prospect that
12 respondents will have to refile their motion to dismiss does not constitute legal prejudice
13 sufficient to deny petitioner's request for voluntary dismissal without prejudice. *Searcy*, 2013
14 WL 837936, at *3; *Mitchell-Jones*, 2011 WL 3273221, at *3; *Creative Labs, Inc.*, 1997 WL
15 588923, at *2. Moreover, the mere fact that petitioner could bring the same claims again does
16 not establish plain legal prejudice. *See Hamilton*, 679 F.3d at 145 (prospect of second lawsuit
17 insufficient to establish plain legal prejudice). Because there is no indication that respondents
18 will suffer plain legal prejudice if this matter is dismissed without prejudice, petitioner is entitled
19 to have his habeas petition and this action dismissed without prejudice.

20 CONCLUSION

21 Based on the foregoing, the Court recommends that petitioner's request for voluntary
22 dismissal without prejudice, Dkt. 16, be GRANTED; respondents' motion to dismiss, Dkt. 11, be
23 DENIED as moot; and petitioner's habeas petition and this action be DISMISSED without
24 prejudice. A proposed order accompanies this Report and Recommendation.

